

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ARASELI COLMENARES,

Defendant.

CASE NO. 8:09CR173

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto and motion for variance (Filing No. 24). The government adopted the PSR (Filing No. 22). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Order on Sentencing Schedule required counsel to submit informal objections to the probation officer by July 16, 2009. (Filing No. 4, ¶ 4.) The probation officer sent the final version of the PSR to the Court and counsel on July 23, 2009. (Filing No. 4, ¶ 5.) On August 3, 2009, the probation officer received the presentence packet and Defendant's objections to the PSR. August 3, 2009, is the date that unresolved objections were to be filed with the Court. (Filing No. 4, ¶ 6.) Defense counsel's objections were not timely submitted to the probation officer before preparation of the final PSR. The objections are denied as untimely.

The Defendant's motion for variance (Filing No. 24) will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objections to the PSR are denied;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 8th day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge